



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1998

Mr. Michael G. Young
Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2292

Dear Mr. Young:

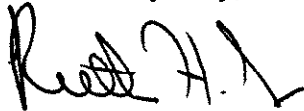
You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118351.

The Department of Health (the "department") received a request for complaints made concerning a birthing center and two midwives. The department asserts that section 552.103(a) is applicable to the records which are responsive to the request. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

We have reviewed the documents supplied to this office, and note initially that these records contain some information obtained from medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Medical records and information obtained from medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Our review of the submitted information shows that the remaining information is protected at this time from disclosure under section 552.103(a). See Open Records Letter No. 98-2065 (1998). Please note that the applicability of section 552.103(a) ends once the anticipated litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982). However, the MPA records and other responsive information made confidential by law must be withheld from disclosure even after the anticipated litigation has concluded.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at-issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118351

Enclosures: Submitted documents

cc: Mr. Michael "Mickey" Milligan
600 Sunland Park Drive
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El Paso, Texas 79912
(w/o enclosures)